

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-1137V

UNPUBLISHED

DONNA BURKE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 16, 2021

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On September 3, 2020, Donna Burke filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (SIRVA) after receiving an influenza (“flu”) vaccination on November 3, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 15, 2021, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case because she meets the criteria for a presumed SIRVA as defined by the Vaccine Injury Table. Respondent’s Rule 4(c) Report at 1, 4. Specifically, Petitioner had no history of pain, inflammation, or

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<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

dysfunction in her shoulder; Petitioner's pain occurred within 48 hours of receipt of an intramuscular vaccination; Petitioner's pain and reduced range of motion were limited to the shoulder in which the vaccine was administered; and no other condition or abnormality was identified to explain Petitioner's symptoms. *Id.* at 4. Respondent further agrees that "the statutory six-month sequela requirement has been satisfied." *Id.*

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master